

CHAPTER NO. 112

SENATE BILL NO. 1603

By Elsea, McNally, Dixon

Substituted for: House Bill No. 1119

By Wood, McDaniel, Walker

AN ACT To amend Tennessee Code Annotated, Title 45, Chapters 1 and 2 and Section 45-11-105(c), relative to the regulations of trust companies and banks.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 45-1-103, is amended by adding the following new subsections to be appropriately designated:

() "Act as a fiduciary" or "acting as a fiduciary" means to act in the capacity of a fiduciary as that term is defined by T.C.A., Section 35-2-102.

() "Branch" with respect to a state bank means any place of business separated from the main office of a bank at which deposits are received, or checks paid or money lent.

() "Company" includes a bank, trust company, corporation, partnership, association, business or other trust, or similar business entity.

() "Depository institution" means any company included for any purpose within any of the definitions of "insured depository institution" as set forth in 12 U.S.C., §§ 1813(c)(2) & (3).

() "Fiduciary record" means a matter written, transcribed, recorded, received or otherwise in the possession or control of a trust institution, whether in physical or electromagnetic form, that is necessary to preserve information concerning an act or event relevant to an account or a client of a trust institution.

() "Foreign bank" means a foreign bank, as defined in Section 1(b)(7) of the International Banking Act of 1978.

() "Home state" means (A) with respect to a federally chartered trust institution and a foreign bank, the state in which such institution maintains its principal office and (B) with respect to any other trust institution, the state which chartered such institution.

() "Home state regulator" means the bank supervisory agency with primary responsibility for chartering and supervising an out-of-state trust institution.

() "New trust office" means a trust office located in a host state which (i) is originally established by the trust institution as a trust office and (ii) does not become a trust office of the trust institution as a result of (A) the acquisition of another trust institution or trust office of another trust institution or (B) a merger, consolidation, or conversion involving any such trust institution or trust office.

() "Office" with respect to a trust institution means the principal office or a trust office, but not a branch.

() "Principal office" with respect to:

(A) a state trust company, means a location registered with the commissioner as the state trust company's home office at which:

(i) the state trust company does business;

(ii) the state trust company keeps its corporate books;
and

(iii) at least one executive officer of the state trust company maintains an office; or

(B) a trust institution other than a state trust company, means its principal place of business in the United States.

() "Savings Association" means an association as defined and operating under T.C.A., Title 45, Chapter 3 or under the laws of the United States.

() "State trust company" means a corporation organized or reorganized under the Banking Act whose purposes and powers are limited to fiduciary purposes and powers, including a trust company previously organized under the laws of this state.

() "State trust institution" means a trust institution having its principal office in this state.

() "Trust company" means a state trust company or any other company chartered to act as a fiduciary that is neither a depository institution nor a foreign bank.

() "Trust institution" means a depository institution, foreign bank, state bank or trust company authorized to act as a fiduciary.

() "Trust office" means an office, other than the principal office, at which a trust institution is authorized by the commissioner to act as a fiduciary.

() "Unauthorized trust activity" means (A) a company, other than one identified in T.C.A., Title 45, Chapter 2, Part 10, acting as a fiduciary within this state, (B) a trust institution acting as a fiduciary in this state at any location that is not its principal office, trust office or branch, or (C) an out-of-state trust institution acting as a fiduciary in this state in violation of an order issued by the commissioner.

SECTION 2. Tennessee Code Annotated, Section 45-1-118(c)(2), is amended by deleting the language "or place of business" in the first sentence.

SECTION 3. Tennessee Code Annotated, Section 45-1-124, is amended by adding in subsection (d) the language and punctuation "trust companies," after the words "state banks," and before the words "savings and loan associations", and by deleting subsection (b) in its entirety and substituting the following as a new subsection (b):

(b) To the full extent consistent with such rights, liabilities, and penalties, all state banks and, to the extent applicable, all banks, shall hereafter be operated in accordance with the provisions of this chapter and Chapter 2 of this title. Unless the commissioner determines otherwise, the provisions of Title 45, Chapters 1 and 2 and the rules thereof shall also apply to the operation and regulation of state trust companies and banks whose purposes and powers are limited to fiduciary purposes and powers.

SECTION 4. Tennessee Code Annotated, Section 45-1-124, is amended by adding the following language as new, appropriately designated subsections:

() The charter of a trust company granted by the commissioner shall not be void due to the enactment of any amendment or repeal of the laws under which it was formed if such trust company is in operation, as determined by the commissioner, on July 1, 1999.

() Companies engaged in activities subject to Title 45, Chapters 1 and 2, on July 1, 1999, but formed, as determined by the commissioner, prior to the enactment of Chapter 620 of the Public Acts of 1980 and not previously subject to regulation by the commissioner may continue to act as a fiduciary without submitting an application. However, such entities shall be otherwise fully subject to Chapters 1 and 2.

() Companies authorized by their charter, prior to the enactment of Chapter 620, to engage in fiduciary activities, but not engaging in fiduciary activities on July 1, 1999, must file the appropriate application to establish a trust company and then fully comply with Chapters 1 and 2.

() All state trust companies operating on July 1, 1999, shall have such period of time as the commissioner determines to be reasonable and prudent to conform to the requirements of Chapters 1 and 2 and the regulations thereunder, but such period shall not exceed three (3) years from July 1, 1999. During this period of time, to conform to the requirements of Chapters 1 and 2, the commissioner may conduct examinations at such company's expense, and apply the requirements of Chapters 1 and 2 as deemed appropriate.

SECTION 5. Tennessee Code Annotated, Title 45, Chapter 2, Part 2, is amended by adding the following language as a new, appropriately designated section:

45-2-2___. Any charter issued under the provisions of this chapter shall be null and void if an institution which is chartered and commences business ceases to conduct business and no business is conducted for a period of two (2) years. For the purposes of this section, "business" shall mean receiving deposits, paying out money on checks and making loans; or acting as a fiduciary for the purposes of a trust company.

SECTION 6. Tennessee Code Annotated, Section 45-2-402, is amended by adding the following as a new subsection:

(e) The board of a state trust company is responsible for the proper exercise of fiduciary powers by the state trust company and each matter pertinent to the exercise of fiduciary powers, including, but not limited to:

(1) the determination of policies;

(2) the investment and disposition of property held in a fiduciary capacity; and

(3) the direction and review of the actions of each officer, employee, and committee used by the state trust company in the exercise of its fiduciary powers.

SECTION 7. Tennessee Code Annotated, Section 45-2-1001(a), is amended by deleting the words and symbols "A bank (which term includes a trust company, for the purposes of this section and Sections 45-2-1002 – 45-2-1005) having paid-up capital and surplus of one hundred twenty thousand dollars (\$120,000)" and substituting instead the words and symbols "A bank authorized to act as a fiduciary (which term includes a trust company, for the purposes of this section and Sections 45-2-1003 – 45-2-1006) having and maintaining paid-in capital and surplus of five hundred thousand dollars (\$500,000)".

SECTION 8. Tennessee Code Annotated, Section 45-2-1008(h), is amended by deleting the words "or trust department" in the second sentence and by inserting the words and symbols ", trust department or unrelated party" between the words "company" and "as", and by inserting the following language between the first and second sentences:

A bank, trust company or trust department may also delegate, to an unrelated party pursuant to a written agreement, any investment, management or administrative function if such bank, trust company or trust department exercises reasonable care, judgment and caution in (1) selecting the agent, taking into consideration the agent's financial standing and reputation; (2) establishing the scope and other terms of any delegation; and (3) reviewing periodically the agent's actions in order to monitor overall performance and compliance with the scope and other terms of the delegation.

SECTION 9. Tennessee Code Annotated, Title 45, Chapter 2, Part 10, is amended by inserting the following new language as Section 45-2-1001 and by redesignating the existing sections accordingly:

45-2-1001. Companies Authorized to Act as a Fiduciary.

(a) No company shall act as a fiduciary in this state except:

(1) a state trust company;

(2) a state bank authorized to act as a fiduciary;

(3) a savings association or savings bank organized under the laws of this state and authorized to act as a fiduciary;

(4) a national bank having its principal office in this state and authorized by the Comptroller of the Currency to act as a fiduciary pursuant to 12 U.S.C. 92a;

(5) a federally chartered savings association or savings bank having its principal office in this state and authorized by its federal chartering authority to act as a fiduciary;

(6) an out-of-state bank with a branch in this state established or maintained pursuant to Tennessee Code Annotated, Title 45, Chapter 2, or a trust office authorized by the commissioner pursuant to this chapter;

(7) an out-of-state trust company with a trust office authorized by the commissioner pursuant to this chapter;

(8) a foreign bank with a trust office authorized by the commissioner pursuant to this chapter; or

(9) a private trust company to the extent authorized by the commissioner pursuant to this chapter.

(b) No company shall engage in an unauthorized trust activity. No company shall be deemed to be subject to the provisions of Title 45, Chapters 1 and 2, regulating fiduciary activities to the extent that the company's activities are permitted by existing statutory authority or are customarily performed as a traditional incident to the company's regular business activities.

SECTION 10. Tennessee Code Annotated, Title 45, Chapter 2, Part 10, is amended by adding the following new sections:

45-2-1011. Fiduciary Activities of State Trust Institution.

(a) A state trust institution may act as a fiduciary in this or any other state or foreign country, subject to complying with applicable laws of such state or foreign country.

(b) In addition, a state trust institution may conduct any activities at any office outside this state that are permissible for a trust institution chartered by the host state where the office is located, except to the extent such activities are expressly prohibited by the laws of this state or by any regulation or order of the commissioner applicable to the state trust institution; provided, however, that the commissioner may waive any such prohibition if he or she determines that the involvement of out-of-state offices of state trust institutions in particular activities would not threaten the safety or soundness of such state trust institutions.

(c) A state trust institution may:

(1) perform any act as a fiduciary at each trust office established under this act and at an authorized branch; and

(2) exercise any incidental power that is reasonably necessary to enable it to fully exercise commonly accepted fiduciary powers conferred in Title 45, Chapters 1 and 2.

(d) A state trust institution may exercise any other power authorized by Title 45, Chapters 1 and 2, or any power authorized to federally chartered trust institutions whose purposes and powers are limited to fiduciary purposes and powers, subject to the commissioner's regulation for safety and soundness. A state trust institution may exercise any power authorized to trust institutions chartered by another state whose purposes and powers are limited to fiduciary purposes and powers, subject to the commissioner's regulation for safety and soundness.

45-2-1012. Fiduciary Activities of Out-of-State Trust Institution. An out-of-state trust institution which establishes and maintains one or more offices in this state under this chapter may conduct any activity at each such office which would be authorized under the laws of this state for a state trust institution to conduct at such an office.

45-2-1013. State Trust Company Principal Office.

(a) Each state trust company must have and continuously maintain a principal office in this state.

(b) A state trust company shall apply to the commissioner to change its location or the location of any of its offices pursuant to T.C.A. Section 45-2-218.

45-2-1014. Trust Office.

(a) A state trust institution may establish or acquire and maintain trust offices anywhere in this state. Any prohibition on the acquisition of an institution which has not been in operation for at least five (5) years shall not apply to trust companies. A state trust institution desiring to establish or acquire and maintain such an office shall file a written notice with the commissioner setting forth the name of the state trust institution, the location of the proposed additional office, furnish a copy of the resolution adopted by the board authorizing the additional office and pay the filing fee prescribed by the commissioner. If acquiring a trust office, the trust institution shall provide evidence that all fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed.

(b) The notificant may commence business at the additional office on the 31st day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The acquiring trust institution shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution.

(d) The thirty (30) day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the state trust institution may establish the additional office only on prior written approval by the commissioner.

(e) The commissioner may deny approval of the additional office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office would be contrary to the public interest.

(f) A state trust institution may also establish and maintain a new trust office or acquire and maintain an office outside of this state. In addition to the notice required to be provided in subsection (a), the trust institution must also provide evidence that the laws of the jurisdiction where the office is to be located permit such an office, a copy of the authorizing board resolution and the filing fee, if any, prescribed by the commissioner. The process of review in subsections (b), (d) and (e) above shall be applicable. The commissioner shall also consider the views of the appropriate bank supervisory agencies.

45-2-1015. Out-of-State Trust Institution Trust Office.

(a) An out-of-state trust institution may act as a fiduciary from a trust office only if it maintains (1) an office in this state as permitted by this chapter or (2) a branch in this state, and similar institutions chartered under the laws of Tennessee are permitted to establish or acquire such offices and engage in substantially similar activities permitted to out-of-state trust institutions by this

chapter in the state where such out-of-state trust institution has its principal office.

(b) An out-of-state trust institution desiring to establish or acquire and maintain a trust office in this state pursuant to this part shall provide, or cause its home state regulator to provide, written notice of the proposed transaction to the commissioner on or after the date on which the out-of-state trust institution applies to the home state regulator for approval to establish and maintain or acquire such office. The notice shall set forth the name of the out-of-state trust institution, the location of the proposed office, satisfactory evidence that the notificant is a trust institution, furnish a copy of the resolution adopted by the board authorizing the office and pay the filing fee, if any, prescribed by the commissioner. If acquiring a trust office, the out-of-state trust institution shall provide evidence that all fiduciary obligations and liabilities of the parties have been properly discharged or otherwise assumed. Any prohibition on the acquisition of an institution which has not been in operation for at least five (5) years shall not apply to trust companies.

(c) The acquiring trust institution shall succeed by operation of law to all of the rights, privileges and obligations of the selling trust institution. No such acquisition alone shall result in the establishment of a branch.

(d) An out-of-state trust institution may not establish or acquire a trust office in this state unless:

(1) the notificant shall have provided satisfactory evidence to the commissioner of compliance with (i) any applicable requirements of Tennessee Code Annotated, Title 48, and (ii) the applicable requirements of its home state regulator for acquiring or establishing and maintaining such office.

(2) the commissioner, acting within sixty (60) days after receiving notice shall have certified to the home state regulator that the requirements of this section have been met and the notice has been approved or, if applicable, that any conditions imposed by the commissioner pursuant to subsection (e) below have been satisfied.

(e) The out-of-state trust institution may commence business at the trust office on the sixty-first (61st) day after the date the commissioner receives the notice unless the commissioner specifies an earlier or later date, provided, with respect to an out-of-state trust institution that is not a depository institution and for which the commissioner shall have conditioned such approval on the satisfaction by the notificant of any requirement applicable to a state trust company, such institution shall have satisfied such conditions and provided the commissioner satisfactory evidence thereof. The sixty (60) day period of review may be extended by the commissioner on a determination that the written notice raises issues that require additional information or additional time for analysis. If the period of review is extended, the out-of-state trust institution may establish the office only on prior written approval by the commissioner.

(f) The commissioner may deny approval of the office if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed office is contrary to the public interest. In acting on the notice, the commissioner shall consider the views of the appropriate bank supervisory agencies.

(g) An out-of-state trust institution that maintains a trust office in this state under this section may establish or acquire additional trust offices in this state to the same extent that a state trust institution may establish or acquire additional offices in this state pursuant to the procedures for establishing or acquiring such offices.

45-2-1016. Name of Trust Institution. A state trust company or out-of-state trust institution may use any name in connection with establishing an office in this state pursuant to this chapter, except that the commissioner may determine that a name proposed to be used is potentially misleading to the public and require such company or institution to select a name which is not potentially misleading.

45-2-1017. Designation of Trustee. Any person residing in this state may designate any trust institution to act as a fiduciary on behalf of such person.

45-2-1018. Choice of Law Governing Trust and Fiduciary Investments. Any trust institution that maintains a trust office in this state and its affected clients may designate either (1) this state, (2) a state where affected clients reside or (3) the state where such trust institution has its principal office as the state whose laws shall govern any written agreement between such trust institution and its client or any instrument under which the trust institution acts for a client and with respect to the fiduciary investment standards applicable to such agreements.

45-2-1019. Engaging in Commerce Prohibited. A state trust company may not invest its funds in trade or commerce by buying, selling, or otherwise dealing in goods or by owning or operating a business not related to its fiduciary business, except as necessary to fulfill a fiduciary obligation to a client.

45-2-1020. Pledge of Assets. A state trust company may not pledge or create a lien on any of its assets except (i) to secure the repayment of money borrowed, (ii) as specifically authorized or required by T.C.A., Section 45-2-611, or (iii) by rules adopted under this chapter. An act, deed, conveyance, pledge, or contract in violation of this section is void.

45-2-1021. Merger Authority. A state trust company may merge with another trust company or into a depository institution pursuant to the applicable provisions of T.C.A., Title 45, Chapter 2, Part 13, or as otherwise permitted. However, any requirement that an institution must be in operation for five (5) years before engaging in a merger transaction shall not apply to trust companies. Mergers of state trust companies into a resulting out-of-state trust institution is permitted to the same extent that the other state's law permits Tennessee trust institutions to merge with trust companies of such other state. If a state trust company merges into an out-of-state trust institution, the resulting out-of-state trust institution may operate a trust office at the location of the state trust company pursuant to the notice requirements for such offices under this chapter, but such office shall not constitute a branch.

45-2-1022. Sale of Assets.

(a) The board of a state trust company, with the commissioner's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder approval if the commissioner finds:

(1) the interests of the state trust company's clients and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(2) the sale is in the best interest of the state trust company's clients and creditors.

(b) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(1) all of the state trust company's liabilities to clients;

(2) all of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(3) obligations incurred by the commissioner arising out of the supervision or sale of the state trust company; and

(4) fees and assessments due the department.

(c) This section does not affect the commissioner's right to take action under another law. The sale by a trust company of all or substantially all of its assets with shareholder approval is considered a voluntary dissolution and liquidation and is governed by T.C.A., Section 45-2-1501.

SECTION 11. Tennessee Code Annotated, Section 45-2-1308(a), is amended by inserting between the words "duties," and "and" the following language:

fiduciary appointments subject to Section 45-2-1310

SECTION 12. Tennessee Code Annotated, Section 45-2-1410, is amended by redesignating the current language as subsection (a) and by adding the following as a new subsection:

(b) The notice requirement of subsection (a) shall apply to out-of-state trust institutions that maintain an office in this state pursuant to this chapter. Such notice shall also be required of (1) any transfer of all or substantially all of the trust accounts or trust assets of the out-of-state trust institution to another person or (2) the closing or disposition of any office in this state.

SECTION 13. Tennessee Code Annotated, Section 45-2-1411, is amended by deleting the current statutory language in its entirety and by substituting instead the following:

If the commissioner determines that a branch maintained by an out-of-state state bank or a trust office maintained by an out-of-state trust institution in this state is being operated in violation of any provision of the laws of this state, or is being operated in an unsafe and unsound manner, the commissioner shall have the authority to take all such enforcement actions as the commissioner would be empowered to take if the branch or office were a Tennessee state bank; provided, that the commissioner shall promptly give notice to the home state supervisory agency of each enforcement action taken against an out-of-state state bank or out-of-state trust institution. To the extent practicable, the commissioner shall consult and cooperate with the home state supervisory agency in pursuing and resolving the enforcement action. The commissioner may

issue an order temporarily or permanently prohibiting a trust institution from acting as a fiduciary in this state.

SECTION 14. Tennessee Code Annotated, Section 45-2-1502(b)(2), is amended by adding the words "to have all of the rights, powers, duties and obligations granted to the commissioner in possession" between the words "receiver" and "for".

SECTION 15. Tennessee Code Annotated, Section 45-2-1504(c), is amended by adding the following sentence to the end of the subsection:

Such fiduciary accounts may be transferred by the commissioner to another qualified corporate fiduciary as determined by the commissioner and notice of such transfer must be given by registered mail to the parties by the transferee corporate fiduciary.

SECTION 16. Tennessee Code Annotated, Section 45-2-1602, is amended by adding the following new subsection to be appropriately designated:

() The commissioner has the power to review the operations of any location engaging in activities as principal or on behalf of a state or out-of-state trust institution or any other company to determine if such location is engaging in unauthorized trust activity.

SECTION 17. Tennessee Code Annotated, Section 45-2-1709(a)(1), is amended by adding the following language as a new subdivision:

(C) It is unlawful for any person, firm or corporation, other than those defined as a trust institution pursuant to T.C.A., Section 45-1-103, to use or employ in any manner the term "trust" in connection with the carrying on or operation of business in this state. This section shall have no application to existing persons as of July 1, 1999, whose name contains the term "trust". Notwithstanding the above, the commissioner may permit the use of the term "trust" upon application on the same basis as under subdivisions (a)(1)(A) and (B) above.

SECTION 18. Tennessee Code Annotated, Title 45, Chapter 2 is amended by adding the following as a new part regarding private trust companies:

45-2- _____. Private Trust Company.

(a) A private trust company acting as a fiduciary in this state is a company that does not transact business with the general public. Such company shall comply with each and every provision of the Banking Act and the rules thereof applicable to a public trust company unless expressly exempted therefrom in writing by the commissioner pursuant to this section or by rule adopted by the department.

(b) A private trust company or proposed private trust company may request in writing that it be exempted from any provision of the Banking Act or the rules thereof. The commissioner may grant the exemption in whole or in part if the commissioner finds that the private trust company does not and will not transact business with the general public. For purposes of this section:

(1) "Transact business with the general public" means any sales, solicitations, arrangements, agreements, or transactions to provide fiduciary services, whether or not for a fee, commission, or any other

type of remuneration, with any client that is not a family member or a sole proprietorship, partnership, joint venture, association, trust, estate, business trust, or other company that is not 100% owned by one or more family members.

(2) "Family member" means any individual who is related within the fourth degree of affinity or consanguinity to any individual or individuals who control a private trust company or which is controlled by one or more trusts or charitable organizations established by such individual or individuals. All individuals who control a private trust company or establish trusts or charitable organizations controlling such private trust company must be related within the second degree of affinity or consanguinity.

(c) At the expense of the private trust company, the commissioner may examine or investigate the private trust company in connection with an application for exemption. Unless the application presents novel or unusual questions, the commissioner shall approve the application for exemption not later than the sixty-first (61st) day after the date the commissioner considers the application complete and accepted for filing. Otherwise, the application shall be deemed approved unless the commissioner extends the time for review by requiring the submission of additional information as considered necessary to an informed decision.

(d) Any exemption granted under this section may be made subject to conditions or limitations imposed by the commissioner consistent with this chapter.

(e) The department may adopt rules defining other circumstances that do not constitute transaction of business with the public, specifying the provisions of the Banking Act that are subject to an exemption request, and establishing procedures and requirements for obtaining, maintaining, or revoking exempt status.

45-2- _____. Requirements to Apply for and Maintain Status as a Private Trust Company.

(a) Application.

(1) A private trust company requesting an exemption from provisions of the Banking Act shall file an application with the commissioner containing the following:

(A) a nonrefundable application fee as set by the department;

(B) a detailed statement under oath showing the private trust company's assets and liabilities as of the end of the month previous to the filing of the application;

(C) a statement under oath of the reason for requesting the exemption;

(D) a statement under oath that the private trust company is not currently transacting business with the public and

that the company will not conduct business with the public without the prior written permission of the commissioner;

(E) the current street mailing address and telephone number of the physical location in this state at which the private trust company will maintain its books and records, together with a statement under oath that the address given is true and correct and is not a U. S. Postal Service post office box or a private mail box, postal box, or mail drop; and

(F) a listing of the specific provisions for which the request for exemption is made.

(2) The commissioner shall not approve a private trust company exemption unless the application is completed as required in this section.

(b) Requirements.

(1) To maintain status as an exempt private trust company under this chapter, the private trust company shall comply with the following:

(A) an exempt private trust company shall not transact business with the public.

(B) an exempt private trust company shall file an annual certification that it is maintaining the conditions and limitations of its exempt status. This annual certification shall be filed on a form provided by the commissioner and be accompanied by a fee determined by the department. The annual certification shall be filed on or before June 30 of each year. The commissioner may examine or investigate the private trust company, at the company's expense, periodically as necessary to verify the certification.

(C) an exempt private trust company shall comply with the principal office provisions, address and telephone requirements of this section.

(c) Change of Control.

Control of an exempt private trust company may not be transferred or sold with exempt status. In any change of control, the acquiring control person must comply with the provisions of this chapter and the exempt status of the private trust company shall automatically terminate upon the effective date of the transfer. A separate application for exempt status must be filed if the acquiring person wishes to obtain or continue an exemption pursuant to this section.

45-2- _____ Remedies.

(a) If a private trust company violates any provisions of this chapter, the commissioner may:

(1) institute any action or remedy prescribed by T.C.A., Title 45, Chapters 1 and 2, or any applicable rule, or

(2) refer the private trust company to the attorney general for institution of a quo warranto proceeding to revoke the charter.

(b) After notice and an opportunity for a hearing pursuant to T.C.A., Title 4, Chapter 5, the commissioner shall have authority to revoke the exempt status of a private trust company in the following circumstances:

(1) the exempt private trust company makes a false statement under oath on any document required to be filed by the department; or

(2) the exempt private trust company fails to submit to an examination as required by this chapter; or

(3) the exempt private trust company withholds requested information from the commissioner; or

(4) the exempt private trust company violates any provision applicable to exempt private trust companies.

(c) After taking effect, the revocation is final and nonappealable as to that private trust company. The private trust company shall then be subject to all of the requirements and provisions applicable to non-exempt state trust companies within such period of time as the commissioner determines reasonable and circumstances warrant.

45-2- _____. Conversion to Public Trust Company.

(a) A private trust company may terminate its status as a private trust company and commence transacting business with the general public. A private trust company desiring to commence transacting business with the general public shall file a notice on a form prescribed by the commissioner, which shall set forth the name of the private trust company and an acknowledgment that any exemption granted or otherwise applicable to the private trust company shall cease to apply on the effective date of such notice, furnish a copy of the resolution adopted by the board authorizing the private trust company to commence transacting business with the general public, and pay the filing fee, if any, prescribed by the commissioner. The commissioner may examine or investigate the private trust company, at the company's expense, in order to act on the notice.

(b) The notificant may commence transacting business with the general public on the thirty-first (31st) day after the date the commissioner receives the notice, unless the commissioner specifies an earlier or later date.

(c) The thirty (30) day period of review may be extended by the commissioner on determination that the written notice raises issues that require additional information or additional time for analysis. If the period for review is extended, the notificant may commence transacting business with the public only on prior written approval by the commissioner.

(d) The commissioner may deny approval of the notice of the private trust company to commence transacting business with the general public if the commissioner finds that the notificant lacks sufficient financial resources to undertake the proposed expansion without adversely affecting its safety or soundness or that the proposed transacting of business with the general public

would be contrary to the public interest or if the commissioner determines that the notificant will not within a reasonable period be in compliance with any provision from which the notificant had been previously exempted.

(e) Upon the effective date of conversion, the private trust company shall then be subject to all of the provisions of T.C.A., Title 45, Chapters 1 and 2, and the rules thereof that are applicable to non-exempt state trust companies.

SECTION 19. Tennessee Code Annotated, Section 45-11-105(c), is amended by deleting the words "required for a new bank charter application" and substituting instead the words "established by regulation".

SECTION 20. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 21. This act shall take effect on July 1, 1999, the public welfare requiring it.

PASSED: April 28, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 4th day of May 1999


DON SUNDQUIST, GOVERNOR